IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CIVIL REVISION APPLICATION NO.16 OF 2002

Rev. Fr. Roque Fernandes,
major, priest, r/o Bhati,
Parra, Bardez-Goa. ... Applicant.

versus

1. Shri Alfred John D'Souza,
major, employee and his
wife.

2. Smt. Thereza Celediona
D'Souza, major, housewife,
both residents of Bhati,
Parra, Bardez, Goa. ... Respondents.

Applicant in person.

Mr. J. P. Mulgaonkar, Advocate for the Respondents.

CORAM: P.V.HARDAS, J.

DATED: 6TH JUNE, 2002.

ORAL ORDER

By consent of parties, this Revision is taken up for final disposal at the stage of Admission.

2. This Revision has been filed by the present Applicant, who was the Original Plaintiff in Special Civil Suit No.285/81. The said Special Civil Suit was decreed by the learned Civil Judge, Senior Division, Mapusa, Goa and an Execution Application No.32/89/Sr. came to be filed against the present Non Applicants who were the Original Applicants i.e. Judgment Debtors.

2. The Decree against the present Non

Applicants was for an amount of Rs.33,118/- plus expenses of Rs.1,500/- in addition to costs as per the bill of costs of Rs.1,739/-. Thus, the total decretal amount was Rs. 36,357/- together with interest at the rate of 12% from 9th August, 1979 till the date of decree i.e. till 9th December, 1988. Future interest at the rate of 6% per annum was awarded from the date of the Decree till the final payment.

3. It is unfortunate that the execution remained pending for considerable time. However, the occasion for passing of this impugned Order, dated 19th September, 2001 arose when the present Non Applicants set up a plea before the learned Trial Court that they had paid Rs.13,752/- in excess of the claim under the Decree. On such a plea being raised, the learned Civil Judge, Senior Division, Mapusa, Goa, with the assistance of the Court Nazir, came to the conclusion that the claim under the Decree worked out to Rs.1,03,448/- whereas according to the learned Trial Court the Applicant/Original Plaintiff had been paid Rs.1,17,000/-. The learned Trial Court arrived at the figure of Rs.1,03,448/- on the basis of the dates in the roznama evidencing the payment made to the Applicant. Thus, the learned Trial Court came to the conclusion that an amount of Rs.13,752/- had been

paid in excess by the Judgment Debtors to the Decree Holder. Since according to the learned Trial Court the Decree stood satisfied, the execution proceedings were dismissed.

4. The Applicant/Decree Holder has appeared in person and has chosen to argue his case himself. The principle ground for challenging the Order of dismissal of the execution proceedings is that the learned Trial Court ought to have awarded or calculated the amount by awarding compound interest to the Applicant. In support of this it is urged that since the Execution Application was pending for about 22 years, the Applicant/Decree Holder ought to have awarded compound interest.

5. Mr. J. P. Mulgaonkar, the learned Advocate appearing for the Non Applicants/Judgment Debtors has placed the original Judgment and Decree for my perusal. The learned Trial Court has not awarded compound interest to the Applicant while passing the Decree. In the absence of a clear finding in respect of compound interest, the learned Trial Court was perfectly right in computing simple interest and not compound interest. The learned Trial Court could not have gone beyond the Decree. I have perused the Order of the learned Trial Court. There does not

appear to be any perversity warranting interference in a revision of this Court.

6. For the reasons aforestated, there is no substance in this Civil Revision and the same is dismissed with no order as to costs.

(P. V. HARDAS)
JUDGE

RD.